

AMENDED IN SENATE DECEMBER 18, 2008

Senate Resolution

No. 7

Introduced by Senator Leno

(Principal coauthors: Senators Kehoe and Steinberg)

**(Coauthors: Senators Alquist, Calderon, Cedillo, Corbett, DeSaulnier,
Hancock, Pavley, Wolk, and Yee)**

December 1, 2008

Senate Resolution No. 7—Relative to same-sex marriage.

1 WHEREAS, Article XVIII of the California Constitution
2 mandates distinct procedures for revision and amendment of the
3 California Constitution; and

4 WHEREAS, Article XVIII provides that, while a proposed
5 amendment to the California Constitution can be accomplished
6 through the initiative process, a proposed revision of the California
7 Constitution must originate in the Legislature and must be approved
8 by a two-thirds vote of each house of the Legislature before being
9 submitted to the electors; and

10 WHEREAS, The California Supreme Court, in *Livermore v.*
11 *Waite* (1894) 102 Cal. 113 and subsequent decisions, has held that
12 a revision is a substantial change to the “underlying principles” of
13 the California Constitution or to the structure of our “basic
14 governmental plan”; and

15 WHEREAS, Subdivision (a) of Section 8 of Article II of the
16 California Constitution defines the initiative power as the ability
17 to propose and pass statutory laws and constitutional amendments,
18 but not constitutional revisions; and

19 WHEREAS, Article III of the California Constitution establishes
20 a separation of powers between the legislative, executive, and
21 judicial branches of California’s government; and

1 WHEREAS, Under the separation of powers doctrine established
2 by Article III of the California Constitution, the courts have the
3 ultimate authority to interpret and enforce the principle of equal
4 protection, particularly where government discrimination on a
5 suspect basis or the selective denial of a fundamental right on a
6 suspect basis is at issue; and

7 WHEREAS, The distinct procedures mandated for revision and
8 amendment of the California Constitution, and the crucial
9 deliberative role of the Legislature in any proposed revision of our
10 Constitution, constitute key structural checks in the system of
11 checks and balances mandated by Article III of the California
12 Constitution; and

13 WHEREAS, The distinction between revision and amendment,
14 and the distinct procedures assigned to each, in Article XVIII of
15 the California Constitution, as well as the separation of powers
16 mandated by Article III, are entitled to the highest respect as the
17 expression of the people's will; and

18 WHEREAS, The principle of equal protection, which prohibits
19 unequal government treatment of historically targeted minority
20 groups and ensures that laws enacted by a majority must apply
21 equally to all people, is a foundational principle underlying our
22 Constitution and our democratic system of government; and

23 WHEREAS, The requirement of equal protection of the laws
24 plays an essential structural role in our basic governmental plan
25 by providing a necessary check on the exercise of majority power
26 and, in particular, by prohibiting the enactment of measures that
27 facially single out a historically targeted minority group for adverse
28 treatment and selective exclusion from an important right; and

29 WHEREAS, The Legislature is specially suited to examine and
30 debate significant changes to the principles and structure that
31 underlie the California Constitution, and is structured for precisely
32 such a task; and

33 WHEREAS, Proposition 8, which was titled "Eliminates the
34 right of same-sex couples to marry," was put forward as an
35 initiative measure and enacted by the electors by a bare majority
36 of the vote in the November 4, 2008, general election; and

37 WHEREAS, Proposition 8 purports to amend the California
38 Constitution to eliminate a fundamental right only for a particular
39 minority group on the basis of a suspect classification, while
40 permitting the majority to retain that fundamental right; and

1 WHEREAS, Proposition 8 would severely undermine the
2 foundational principle of equal protection by establishing that any
3 disfavored minority can be targeted to have its fundamental rights
4 stripped away by a simple majority vote; and

5 WHEREAS, Proposition 8 would substantially alter our basic
6 governmental plan by eliminating equal protection as a structural
7 check on the exercise of majority power and by permitting
8 majorities to force groups defined by suspect classifications to
9 fight to protect their fundamental rights under the California
10 Constitution at every election; and

11 WHEREAS, Proposition 8 would violate the separation of
12 powers doctrine by stripping the courts of their core,
13 constitutionally mandated function and traditional authority to
14 enforce equal protection to prevent government discrimination
15 against minority groups and the selective denial of fundamental
16 rights on suspect bases; and

17 WHEREAS, Proposition 8 would also violate the separation of
18 powers doctrine by intruding on the vital role of the Legislature
19 in vetting revisions to the California Constitution and by
20 sidestepping the constitutionally required rigors of the legislative
21 process; now, therefore, be it

22 *Resolved by the Senate of the State of California*, That the Senate
23 opposes Proposition 8 because it is an improper revision, not an
24 amendment, of the California Constitution and was not enacted
25 according to the procedures required by Article XVIII of the
26 California Constitution; and be it further

27 *Resolved*, that the Secretary of the Senate transmit copies of this
28 resolution to the author for appropriate distribution.